



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

  
1215453 - R8 SDMS

DEC 14 2011

Ref: 8ENF-L

Via Electronic Mail and Certified Mail – Return Receipt Requested

Dava Kaitala  
BNSF Railway Company  
2500 Lou Menk Drive  
Fort Worth, TX 76131 2828

Re: BNSF Railway Company's response to EPA's request for information


Dear Ms. Kaitala:

On August 23, 2011, the U.S. Environmental Protection Agency (EPA) sent Burlington Northern Railway a request for information under section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9604(e). A copy of this request is enclosed for your reference. BNSF's response was due within thirty days of the company's receipt of that request. BNSF received EPA's request on August 29, 2011. EPA received BNSF's response over three months later, on December 1, 2011.

EPA's request included seventeen questions asking for information about property and equipment owned and operated by BNSF and its predecessors at the ASARCO smelter facility in East Helena, Montana, and the surrounding Superfund Site. BNSF answered none of EPA's questions, and no BNSF official certified the accuracy and completeness of the company's response. BNSF's entire response consisted of two drawings that are said to be of BNSF's rights-of-way at the Site, and a copy of an insurance policy. EPA has not received any additional responsive information or documents from BNSF since December 1, 2011.

For all practical purposes, BNSF has completely failed to substantively respond to EPA's August 23, 2011 request for information. If EPA does not receive a complete and certified response to that request from BNSF within thirty days of your receipt of this letter, the Agency may find it necessary to issue a unilateral order for compliance under section 104(e)(5) of CERCLA, and/or refer this matter to the U.S. Department of Justice for judicial action.

Sincerely,

  
Steven B. Moores  
Legal Enforcement Program

cc: David M. Smith, BNSF  
Elliot Rockier, DOJ

**SENDER: COMPLETE THIS SECTION**

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Dava Kaitala DEC 15 2011  
BNSF Railway Company  
2500 Lou Menk Drive  
Fort Worth, TX 76131-2828

X

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**2. Article Number**

(Transfer from service label)

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BNSF Rwy Co

AOB/GL MAILROOM

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☐ Addressee

**B. Received by**

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12-19-11

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